

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

KENNETH DAY,  
Plaintiff,

vs.

LSI CORPORATION,  
Defendant.

No. CIV 11-186-TUC-CKJ

**ORDER**

Briefing having been completed on the spoliation issues, counsel presented oral argument to the Court on July 2, 2012.

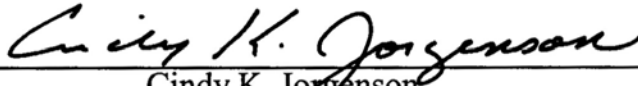
At that time, counsel for Plaintiff stated to the Court that he thought he had submitted the full transcript of the deposition of Stan Skelton, but that he would submit the full transcript of the deposition of Stan Skelton to the Court if he did not. Counsel has submitted that transcript and the transcripts of the depositions of Ian White and Robin Huber. *See* Doc. 129. These transcripts being the subject of the briefs submitted by the parties, the Court accepts these filings in consideration of the spoliation issues.

Counsel for Plaintiff has also submitted a Notice of Filing of Newly-Discovered Evidence and Request for Additional Hearing Related Thereto (Doc. 130). Plaintiff asserts he recently learned of similar conduct by Defendant in another case and seeks to present that evidence to establish a course of conduct. While such evidence might be relevant as to whether Defendant had a culpable state of mind, *see e.g., Surowiec v. Capital Title Agency, Inc.*, 790 F.Supp.2d. 997, 1005 (D.Ariz.2011), the Court considers that Plaintiff is attempting to present this evidence after the time for submitting briefs and oral argument. The

1 consideration of the proposed evidence may result in delay and may confuse the issues before  
2 the Court. For purposes of resolution of the default issues, the Court finds it is not  
3 appropriate to consider such evidence.

4 Accordingly, IT IS ORDERED Request for Additional Hearing Related to Newly  
5 Discovered Evidence (Doc. 130) is DENIED.

6 DATED this 24th day of August, 2012.

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10 Cindy K. Jorgenson  
11 United States District Judge  
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